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2012 MAY 18 A 11: 17

FIRST GENERAL COUNSEL'S REPORT

RR 12L-06

DATE RECEIVED: February 17, 2012

DATE ACTIVATED: March 19, 2012

EARLIEST SOL: February 22, 2016

LATEST SOL: March 18, 2016

SOURCE:

Internally Generated

RESPONDENT:

Johnson & Johnson PAC and Donald Bohn
his official capacity as treasurer

RELEVANT STATUTES:

2 U.S.C. § 434(b)
11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Johnson & Johnson PAC and Donald Bohn, in his official capacity as treasurer ("Committee"), to the Office of General Counsel for failing to disclose a total of \$58,962.95 in receipts and \$96,065.51 in disbursements in its original 2011 February Monthly and 2011 March Monthly Reports. The Committee responded that the reporting problems were caused by a combination of technical difficulties relating to changing its outside reporting service provider and by the individual preparing the reports becoming seriously ill during that time.

We recommend that the Commission open a Matter Under Review and find reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to accurately report receipts and disbursements to the Commission.

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Commission enter into pre-probable cause conciliation with the Committee and approve the attached conciliation agreement.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Johnson & Johnson PAC is a separate segregated fund registered with the Commission, and filed monthly reports with the Commission in February and March 2011. The Committee filed its 2011 February Monthly Report on February 22, two days after the filing due date, disclosing no receipts or disbursements for the reporting period. The next month, the Committee timely filed its 2011 March Monthly Report disclosing \$19,139.96 in receipts and \$32,500 in disbursements. The Committee later filed amendments to both reports disclosing additional activity, as reflected in the chart below.

Report	Date(s) of Amendment(s)	Amount of Increased Receipts	Amount of Increased Disbursements	Total Increased Activity
2011 Feb. Monthly	March 18, 2011 October 3, 2011	\$39,466.46 NA	\$84,530.60 \$2,011.56	\$123,996.40 \$2,011.56
2011 March Monthly	October 3, 2011	\$19,496.65	\$9,523.95	\$29,020.50
	TOTAL	\$58,962.95	\$96,065.51	\$155,028.46

Following these amendments, RAD sent the Committee a Request for Additional Information ("RFAI") regarding the increased activity disclosed on its amended 2011 February Monthly Report dated March 18, 2011. Letter from Quy Vuong, Senior Campaign Finance Analyst, Federal Election Commission, to Donald Bohn, Treasurer, Johnson & Johnson PAC (July 6, 2011) (on file at www.fec.gov). The RFAI stated that the amended report disclosed a substantial increase in the amount of receipts and

1 disbursements from those disclosed in the original report, and requested that the Committee
2 clarify why the additional activity was not provided in the original report.

3 Responding to the RFAI, the Committee filed a Miscellaneous Document (Form
4 99) stating that "due to a technical glitch in our PAC reporting software, we were unable to
5 populate the February monthly report with the January receipt and contribution information
6 prior to the report's February 20, 2011 deadline. Once the problem was identified and
7 corrected, we submitted an amended report on March 18, 2011, prior to filing our March
8 monthly report." See Form 99 filed August 4, 2011. Later, the Committee further
9 amended its 2011 February Monthly Report on October 3, 2011, disclosing an additional
10 \$2,011.56 in disbursements.

11 Referencing both the second amended 2011 February Monthly and amended 2011
12 March Monthly Reports, RAD sent an RFAI to the Committee on October 28, 2011,
13 seeking clarifications regarding the cumulative increase in receipts and disbursements
14 disclosed as compared to the Committee's original filings. In response, the Committee
15 stated on December 2, that "[d]ue to an [sic] technical error on the part of an outside
16 vendor, the receipts were not uploaded into our software with the correct dates. This error
17 has been corrected and the reports were amended to reflect the correct receipts." The
18 response did not reference the increased activity in disbursements. See Form 99 filed
19 December 2, 2011.

20 According to the referral, there were three telephone calls between the Committee's
21 consultants or counsel and the RAD analyst prior to the referral. On January 26, 2012, the
22 RAD analyst called a consultant for the Committee and informed him that the increases in
23 activity on the amended reports referenced in the RFAI would be referred for action, and

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1 explained that the Committee could disclose additional information on the public record if
2 it wished to do so. Subsequently, on the same day, another consultant for the Committee
3 called the RAD analyst to discuss why the increased activity was being referred since the
4 Committee had provided an explanation. The RAD analyst told her that the explanation of
5 vendor error was an inadequate response to the apparent violation, and the Committee
6 could provide additional information on the public record if it wished to do so. On
7 February 2, the Committee's counsel called the RAD analyst and explained that the
8 increased activity was due to a vendor error and also due to the illness of an employee who
9 normally files the Committee's disclosure reports. The RAD analyst explained to counsel
10 that the Committee could disclose these circumstances on the public record and provide
11 any other information it wished. Counsel claimed to have followed the February 2
12 telephone conversation with a letter reiterating the Committee's position, although RAD
13 has no record of receiving that letter. See Response at 3.

14 RAD referred the Committee to the Office of General Counsel for failing to
15 disclose \$58,962.24 in receipts and \$96,065.51 in disbursements in its original 2011
16 February Monthly and 2011 March Monthly Reports. See Memorandum from Patricia
17 Carmona, Chief Compliance Officer, Federal Election Commission, to Anthony Herrera,
18 General Counsel, Federal Election Commission (February 17, 2012) (hereinafter
19 "Referral"). The Committee was referred in accordance with RAD's 2011-2012 Review
20 and Referral Procedures, in which the Commission established a new threshold for
21 referring increases or decreases in activity that aggregate over \$100,000 on amendments
22 filed to reports covering the current and/or previous election cycles, which were received

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1 during the current election cycle. *See 2011-2012 RAD Review and Referral Procedures for*
2 *Unauthorized Committees* at 75.

3 On February 24, 2012, this Office notified the Committee of the Referral in
4 accordance with the Commission's policy regarding notification in non-complaint
5 generated matters. *See 74 Fed. Reg. 38617 (August 4, 2009)*. In its response to the
6 notification, the Committee provided additional information regarding the technical errors
7 it referenced in its earlier RFAI response -- stating that its problems resulted from both
8 technical difficulties relating to a change in its outside reporting service provider from
9 Vocus to DDC and the serious illness of the individual responsible for preparing and filing
10 the Committee's reports. *See Letter from Kenneth Gross, Skadden, Arps, Slate, Meagher*
11 *& Flom to Jeff Jordan, Office of General Counsel (March 13, 2012) (hereinafter*
12 *"Response")*.

13 The Committee states that as of January 1, 2011, it stopped using Vocus as its
14 reporting service provider, and instead engaged DDC to assist in the preparation of its FEC
15 Reports. Response at 2. At that time, the Committee stopped entering payroll data into the
16 Vocus system and provided it to DDC. *Id.* The Committee's outside payroll provider,
17 however, encountered difficulties in confirming its technology to DDC's requirements,
18 resulting in the provider sending improperly formatted information to DDC. *Id.*

19 At the same time these technical difficulties were occurring, the Committee
20 employee who was responsible for filing the Committee's disclosure report was
21 undergoing tests for an undiagnosed illness that was affecting her ability to perform her
22 duties. Response at 2. According to the Response, when attempting to file the 2011
23 February Monthly Report, the employee "mistakenly ran the report out of the Vocus

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1 system, which contained no data for that time period as a result of the switch to DDC," and
2 this caused the Committee to file its original 2011 February Monthly Report disclosing
3 zero receipts and disbursements. *Id.* Shortly thereafter, the employee was diagnosed with
4 a serious illness and took leave from her position to seek treatment; she had very little
5 recall concerning the filing of the original 2011 February Monthly Report. *Id.*

6 According to the Committee's response, it discovered the problem with the 2011
7 February Monthly Report as it prepared to file its 2011 March Monthly Report. Response
8 at 2. The Committee responds that the additional \$2,011.56 in disbursements reported in
9 the amended 2011 February Monthly Report filed on October 3, 2011, was based on a
10 discrepancy caused by "data entry error relating to contribution checks written in January
11 2011" that had been signed and sent, but "listed in the database as 'Queued' instead of
12 disbursed." Response at 3.

13 The Committee further states that when it was preparing its 2011 March Monthly
14 Report, there were still problems with the receipts related to the format of the file provided
15 to DDC by the payroll vendor, and the same data entry error previously mentioned
16 continued to cause problems with disbursements concerning checks written in February
17 2011. Additionally, the illness and subsequent leave of the Committee employee
18 responsible for filing reports "likely contributed to the Committee's failure to detect and
19 cure these problems." Response at 3.

20 After discovering these problems, the Committee conducted an investigation and
21 filed amendments as soon as the problems were identified and the correct data was
22 available. Response at 3. According to the Committee, "[a]t no time was there any intent
23 to not disclose the Committee's activity in full." *Id.* Moreover, the Committee points out

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1 that it filed timely responses to the RFAI's and called and wrote its RAD analyst in an
2 attempt to provide information about problems with the reports. *Id.*

3 To ensure that similar problems do not recur, the Committee has: (1) redistributed
4 responsibilities for preparing and filing reports so as to not rely on one individual; (2) fully
5 implemented the new system with the vendor, and the new system is more automated than
6 the prior system; and (3) assisted by counsel, instituted the practice of reconciling its FEC
7 Reports with its internal records and bank statements each time a report is filed. "In light
8 of the extenuating circumstances surrounding the inadvertent reporting errors," and the
9 Committee's remedial actions, the Committee requests that the referral be dismissed or
10 referred to the Office of Alternative Dispute Resolution.

11 **B. Legal Analysis**

12 The Federal Election Campaign Act of 1971, as amended ("the Act"), requires
13 committee treasurers to file reports of receipts and disbursements in accordance with the
14 provisions of 2 U.S.C. § 434. See 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.1(a). These
15 reports must include, *inter alia*, the total amount of receipts and disbursements. See
16 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. Committees are also required to disclose itemized
17 breakdowns of receipts and disbursements and disclose the name and address of each
18 person who has made any contribution or received any disbursement in an aggregate
19 amount or value in excess of \$200 within the calendar year, together with the date and
20 amount of any such contribution or disbursement. See 2 U.S.C. § 434(b)(2)-(6);
21 11 C.F.R. §§ 104.3(a)(3)-(4), (b)(2)-(4).

22 The Committee did not comply with the Act's reporting requirements when it failed
23 to disclose \$39,466.40 in receipts and \$86,541.56 in disbursements on its original 2011

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1 February Monthly Report, and \$19,496.55 in receipts and \$9,523.95 in disbursements on
2 its original 2011 March Monthly Report.

3 Therefore, we recommend the Commission find reason to believe that the Johnson
4 & Johnson PAC and Donald Bohn, in his official capacity as treasurer, violated
5 2 U.S.C. § 434(b).

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2 IV. RECOMMENDATIONS

3 1. Open a MUR.

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5 2. Find reason to believe that Johnson and Johnson PAC and Donald Bohn, in
6 his official capacity as treasurer, violated 2 U.S.C. § 434(b).

7
8 3. Approve the attached Factual & Legal Analysis.

9
10 4. Enter into conciliation with Johnson and Johnson PAC and Donald Bohn, in
11 his official capacity as treasurer, prior to a finding of probable cause to
12 believe.

13
14 5.

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6. Approve the appropriate letter.

Christopher Hughey
Deputy General Counsel

Daniel A. Petalas
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5-18-12
Date

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